STATE OF MICHIGAN

COURT OF APPEALS

RONALD BLAKNEY,

Plaintiff-Appellant,

v

BRADLEY DERY,

Defendant-Appellee.

UNPUBLISHED
February 24, 2011

No. 296017
Oakland Circuit Court
LC No. 2009-099578-NO

Before: WHITBECK, P.J., and O'CONNELL and WILDER, JJ.

PER CURIAM.

Plaintiff appeals by right the trial court's order granting defendant's motion for summary disposition in this personal injury suit. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

I. Facts

On April 9, 2006, plaintiff and defendant were at Rackham Golf Course in Huntington Woods, Michigan. Plaintiff testified in his deposition that he was scheduled to play in a foursome, apparently in a "group" setting where the group had made two or three tee times. However, the employees at the course had postponed morning tee times due to fog on the course. Consequently, at least 50 people were in the vicinity of the practice area and the first tee waiting for play to begin. As the fog cleared and other groups had begun to tee off, plaintiff's foursome was called to the first tee. Plaintiff testified that he was "probably" at one of the putting areas when his group was called. Plaintiff then carried his clubs on the cart path around the ninth hole toward the first tee. Plaintiff walked behind defendant, reportedly saw him "[take] a swing," and was struck in the face with a golf club defendant was holding. Defendant explained in his deposition that he had been practicing while waiting to tee off, and at the time plaintiff was struck, defendant was stretching by holding two clubs in his left hand and "rotating the clubs counterclockwise, back to front above." However, although defendant maintained in his deposition that the clubs were stationary when plaintiff walked into them, an incident report defendant completed on the day of the accident stated that defendant was swinging the club when plaintiff was struck.

Plaintiff filed a complaint, alleging that defendant was negligent and grossly negligent in causing the accident. Defendant moved for summary disposition pursuant to MCR 2.116(C)(10). Defendant argued that he could only be liable for reckless misconduct because plaintiff and

defendant were coparticipants in a recreational activity, and that defendant's actions were not reckless. The trial court agreed and granted defendant's motion.

II. Applicable Duty of Care

Plaintiff first argues that the trial court erred when it found that defendant owed plaintiff a duty only to refrain from acting recklessly. We disagree.

This Court reviews de novo rulings on motions for summary disposition and questions regarding whether a duty exists. *Harts v Farmers Ins Exch*, 461 Mich 1, 6; 597 NW2d 47 (1999); *Ardt v Titan Ins Co*, 233 Mich App 685, 688; 593 NW2d 215 (1999). A motion brought pursuant to MCR 2.116(C)(10) tests a claim's factual support. "In reviewing a motion under . . . (C)(10), this Court considers the pleadings, admissions, affidavits, and other relevant documentary evidence of record in the light most favorable to the nonmoving party to determine whether any genuine issue of material fact exists to warrant a trial." *Walsh v Taylor*, 263 Mich App 618, 621; 689 NW2d 506 (2004). Summary disposition may be granted under MCR 2.116(C)(10) when there exists no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Steward v Panek*, 251 Mich App 546, 555; 652 NW2d 232 (2002).

In *Ritchie-Gamester v Berkley*, 461 Mich 73; 597 NW2d 517 (1999), our Supreme Court addressed the appropriate standard of care for those involved in recreational activities. The Court concluded "that coparticipants in recreational activities owe each other a duty not to act recklessly." *Id*. at 75. The Court further explained:

> There are myriad ways to describe the legal effect of voluntarily participating in a recreational activity. The act of stepping onto the field of play may be described as "consent to the inherent risks of the activity," or a participant's knowledge of the rules of a game may be described as "notice" sufficient to discharge the other participants' duty of care. [*Id.* at 86.]

When a risk inherent to the activity results in injury, a participant "has no ground for complaint." *Id*. at 87. Players expect that liability will only arise if "a participant's actions exceed the normal bounds of conduct associated with the activity." *Id.* at 94. The *Richie-Gamester* Court acknowledged that "the precise scope of this rule is best established by allowing it to emerge on a case-by-case basis." *Id*. at 89 n 9.

Plaintiff maintains that the *Ritchie-Gamester* standard does not apply and that defendant should be liable for merely negligent acts because, at the time of the injury, plaintiff and defendant had not yet entered the "field of play" and were not participating in rounds of golf. However, the risks inherent to the game of golf, including swinging clubs and errantly flying golf balls, are present in the practice area, on the course, and on the trails in between. These risks were compounded in this case by the fact that play had been delayed for over an hour and the area where the injury occurred had become a bottleneck for at least 50 golfers with clubs, balls, and golf carts. By entering this area where the risks of golf were abounded, plaintiff (who claims that he may have been putting, but was surely carrying his bag to the first tee to begin the competition) and defendant (who had been putting, chipping, and stretching) expected that

liability for their actions would only arise if they exceeded the normal bounds of conduct associated with golf.

III. Recklessness

Plaintiff next argues that, even if the recklessness standard applies in this case, a question of fact exists regarding whether defendant was reckless, so this Court should reverse the trial court's order and remand for further proceedings. We disagree.

The recklessness standard requires that the defendant's actions demonstrate a willingness or purposeful indifference to the injury of the coparticipant. *Behar v Fox*, 249 Mich App 314, 319; 642 NW2d 426 (2001). Conduct within the range of ordinary activity involved in the sport is not reckless. *Ritchie-Gamester*, 461 Mich at 90 n 10.

Plaintiff has failed to present any evidence showing that defendant intended to injure plaintiff, had reason to believe that plaintiff would be injured by his actions and was willing to act anyway, or had a purposeful indifference toward injuring plaintiff or other golfers while he stretched. In addition, plaintiff acknowledged that it was not uncommon to see golfers, who are waiting to tee off, stretching with clubs in their hands. Even viewing defendant's actions in a light most favorable to plaintiff, they were within the normal bounds of conduct associated with golf and therefore the trial court properly granted defendant's motion for summary disposition.

Affirmed.

/s/ William C. Whitbeck
/s/ Peter D. O'Connell
/s/ Kurtis T. Wilder